


# CHAPTER 10

## Maintaining Eligibility



This chapter provides tips on how to maintain benefits for applicants who are found to be disabled. Specific topics include how living arrangements affect SSI benefit levels, issues related to suspensions and terminations, what to do about overpayments, and information about SSI and SSDI work incentives. 

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### How do living arrangements affect ongoing eligibility?

Several common living arrangements can result in a reduction or loss of SSI benefits. Case managers should be aware of them and should advise beneficiaries about those issues.

#### *Homeless shelters*

Residents of emergency public homeless shelters are eligible for SSI, but only for six out of every nine months during which they reside in the shelter. Residents of homeless shelters may be affected by this rule, but it is very specific and may not apply, in most cases, for two reasons.

For a month to be counted against this limit the recipient must live in the shelter for the entire month. If a recipient does not live in the shelter for even one day, the month

does not “count against” the six-month time limit. Many people who are homeless are frequently in and out of public emergency shelters. Very few stay in a shelter for six full months.

The definition of a public emergency shelter is very specific. It only covers shelters operated by Federal, State, or local governments that are intended to provide temporary places for people who are homeless to stay. Shelters sponsored by non-profit organizations, even ones that receive government funds, are excluded from the definition and not subject to the cap.

While few people are affected by this requirement, case managers should be aware that certain long-term emergency shelter residents could have their SSI eligibility suspended due to this rule.

### ***Receiving assistance from friends or family members***

Beneficiaries living “doubled up” in a friend's or family member's home or receiving in-kind assistance from friends, family, or social service agencies must comply with SSA's rules regarding living arrangements. SSI recipients need to be aware that certain types of living arrangements may result in a reduction in benefit amounts. Case managers can assist recipients in an inquiry regarding living arrangements and benefits. For a more in-depth discussion of this, see Chapter 4.

SSA rules state that a recipient who lives in the house of another person for a full calendar month and receives both food and shelter from that person will have his or her benefits reduced by exactly one-third of the full Federal Benefit Rate, regardless of the amount of food and shelter assistance received. This is done under the *value of one-third reduction rule (VTR)*. For example, a recipient who lives with his or her parents and does not pay for rent or food is subject to this rule. Under the rule, instead of receiving the 2005 Federal Benefit Rate of \$579, the monthly check would be reduced by  $\$579 / 3$ , or \$193—making the total payment \$386.

Recipients who live by themselves and receive in-kind assistance from third parties, or who live in the house of another person and receive either food or shelter (but not both) from that person, are subject to a reduction in benefits under the *presumed maximum value rule (PMV)*. The rule creates a presumption that the assistance provided is at least equal to the total of one-third of the Federal Benefit Rate plus \$20.

Recipients cannot circumvent the PMV by renting a property from a friend or relative for less than fair market value. For example, a person may rent a one bedroom apartment for \$200 from his or her parent when similar apartments rent for \$500. Under this scenario, the \$300 difference between the \$200 actual rent and \$500 fair market rent will result in a reduction in benefits under the PMV.

The PMV is rebuttable. For example, if an SSI recipient can submit documentation that shelter assistance actually is only worth \$75, then his or her monthly SSI payment will only be reduced by that amount.

### ***Avoiding benefit reductions***

To avoid the one-third reduction rule, the beneficiary should pay a pro-rata share of household expenses. A pro-rata share is calculated by dividing the average monthly household expenses (food, rent, mortgage, gas, property taxes, and other utilities) by the number of people in the household—including children. If the SSI recipient is paying a pro-rata share of household expenses, his or her benefits will not be reduced.

As long as the recipient is paying a pro-rata share of household expenses, a third party can provide assistance to the recipient without jeopardizing his or her benefit. The only stipulation is that the assistance cannot be used for food or shelter. If the recipient's friend pays an outstanding debt or purchases an item on the beneficiary's behalf, it will

not be subject to the PMV or the VTR. Medical bills are an excellent example of an in-kind payment that can be made without penalty on behalf of a recipient.

Other rules about in-kind *support and maintenance (ISM)* involve the person to whom payments are made. For example, if someone pays rent for a recipient directly to a landlord, it counts as in-kind support and can result in a benefit reduction no greater than one-third of the FBR (less than \$200). However, if that same person gave the recipient the rent money each month, and let the recipient pay it directly to the landlord, it would count as unearned income. Unearned income results in a dollar-for-dollar reduction in the SSI grant, after the \$20 monthly earned income disregard. Therefore \$400 for a rent payment, if given to the beneficiary to transfer, results in a \$380 benefit reduction.

Because living arrangements can affect a recipient's monthly SSI benefit significantly, any changes should be reported to SSA immediately. When changes are reported, they should be accompanied by documentation. For example, if a recipient moves to a new apartment with a different rent expense, he or she should provide SSA with a copy of the new lease, which shows the new rent expense. If a recipient moves in with a friend or family member and agrees to pay rent, the recipient should have a written agreement signed by both the recipient and the person receiving the money. A copy of the signed agreement should be submitted to SSA.

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## **When are benefits suspended or terminated?**

SSI benefits can be suspended or terminated for a variety of reasons. This section discusses the scenarios that can lead to suspensions or terminations and suggest ways to avoid or fix them.

As a general rule, SSI benefits are suspended when a recipient no longer meets eligibility requirements (other than the requirement that a recipient be aged, blind, or disabled). To have a suspension lifted, a recipient does not have to file a new application. Rather, the individual is required to submit evidence that he or she once again meets the non-medical eligibility requirements.

When a suspension is lifted, benefits are resumed effective the first day the eligibility rules are met. This date could be earlier than the date on which evidence is submitted. For example, suppose a recipient had excess resources in the month of March and her benefits were suspended. As soon as the recipient became aware of the problem, her case manager helped to manage the resources so she was back under the resource limit by April 1. She immediately requested reinstatement as of April 1. However, she had to wait until mid-May to get her bank statement, so she could not file evidence of meeting requirements until June 1. In this situation, the recipient would be eligible to receive retroactive benefits for the months of April and May.

After twelve consecutive months of suspension, benefits are terminated. Benefit termination becomes effective on the first day of the thirteenth month. Once benefits are terminated, a new application must be filed to receive SSI again, necessitating a new disability determination. This makes it important for case managers to work closely with SSI recipients who report benefit suspensions to ensure that the suspension is resolved, if resolution is appropriate, before it becomes a termination.

#### ***Suspension for failure to provide necessary information***

When a recipient fails to provide requested information, benefits may be suspended. This type of suspension can be resolved by providing SSA the information requested. Once this is done, benefits can be restored immediately. Retroactive benefits, if applicable, can be paid for any portion of the suspension period where the recipient can document that he or she was eligible.

#### ***Suspension due to excess income or resources***

Benefits will be suspended beginning the first day of the month in which countable income is greater than or equal to the amount to be paid in benefits, or the month in which resources exceed the resource limit. For a suspension due to excess income, benefits are resumed the first month countable income is less than the benefit amount. For a suspension due to excess resources, benefits will be restarted on the first day of the month following the month in which the recipient's resources are under the limit. So,

if a recipient reduces his or her resources in March, he or she can begin to receive benefits again in April.

#### ***Suspension due to residence in a public institution***

Benefits are suspended on the first full calendar month in which a recipient is residing in a public institution (e.g., jail, public residential treatment program). If the recipient is not in the public institution for even one day of the month, benefits are not suspended for that month. Benefits are resumed effective in the month that a recipient no longer lives in the public institution.

#### ***Suspension due to hospitalization***

While residents of public institutions generally are not eligible for benefits, an exception is made for those who are hospitalized. If a recipient is in a medical treatment facility for a full calendar month, benefits are reduced to \$30. However, in 1987, the Social Security Act was amended to provide recipients who are temporarily hospitalized (and who otherwise would have received a reduced benefit or none at all) to receive uninterrupted benefits during the first three full months of hospitalization. This is to enable the beneficiary to pay some or all of the expenses necessary to maintain his or her living arrangement. In this way, the beneficiary does not lose housing because of a need for medical care. Benefits paid under this section of law are referred to as temporary institutionalization (TI) benefits.

### ***Suspension due to loss of status as an eligible alien***

If a recipient loses eligible alien status, benefits are suspended effective on the first day of the month after the recipient last has an eligible immigration status. Benefits can be resumed as of the specific date when a recipient regains an eligible immigration status. The first month's benefits can be prorated.

### ***Suspension due to absence from the United States***

If a recipient is out of the U.S. for more than 30 consecutive days, SSI benefits are suspended until the recipient returns to the country. For benefits to be reinstated, the beneficiary needs to remain in the U.S. for 30 consecutive days. If benefits are not reinstated on the first of the month, benefits will be prorated for that month.

### ***Suspension due to criminal justice involvement***

A recipient will not be eligible for SSI during any month in which he or she:

- Is fleeing to avoid prosecution for a felony crime or for an attempt to commit a felony crime;
- Is fleeing to avoid custody or confinement imposed after conviction for a felony crime; or
- Is violating any condition of a State or Federal probation or parole.

Suspension will occur, effective the month in which an arrest warrant or an order to appear in court is issued, or in the month in

which the individual flees, whichever comes earlier. Benefits can be resumed on the first month during which a recipient is found to no longer be fleeing or violating a condition of probation or parole.

This fairly recent provision of law increasingly is being applied to recipients. It can be particularly problematic for people who are homeless, since they move frequently and may be unaware that such warrants exist. Generally, outstanding warrants for people who are homeless are failure to appear warrants stemming from old arrests. These warrants are felonies, even though the crime that precipitated the warrant may have been a misdemeanor. For example, a person may have been charged initially with disorderly conduct, a misdemeanor. However, by missing a court hearing, a warrant for the individual is issued due to his or her failure to appear. Although the initial charge was a misdemeanor, the warrant is based on the felony of not appearing in court.

Failure to appear warrants issued by cities in which a person who is homeless has lived previously can be hard to resolve. Typically, the city issuing the warrant is disinclined to seek extradition of the recipient from another jurisdiction since the warrant is for a minor offense. However, the court often is just as disinclined to drop the charges. As a result, the felony warrant remains and benefits are suspended.

Often, a recipient has no knowledge of the warrant and left the city where the warrant was issued for a reason other than fleeing justice. This is one approach a case manager



can use to help an individual charged with failure to appear. For example, the beneficiary may be able to document that he or she left town to find a place to live. As long as the recipient is not fleeing from justice, his or her benefits should not be jeopardized.

### ***Responding to a notice of suspension***

Prior to suspending a recipient's benefits, SSA must send a letter describing the proposed action. The recipient may choose to appeal the suspension. If so, he or she should file a request for reconsideration within 60 days of receiving the notice. If the recipient appeals within 10 days, benefits are continued at the pre-suspension level until the appeal is resolved. If payment is continued and the appeal is not resolved in favor of the recipient, any extra benefits received are considered an overpayment and subject to payback.

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## **What should case managers know about overpayments?**

An overpayment is any payment made by SSA to an SSDI or SSI recipient in excess of the amount due to that recipient. When SSA determines an overpayment has been made, the recipient is sent a notice. The notice indicates the amount of the alleged overpayment and the reason the overpayment was made. The notice gives the recipient three options: (1) appeal the overpayment, (2) request a waiver of the overpayment, or (3) repay the overpayment.

### ***Appeal of overpayments***

If a recipient believes that he or she is being charged for an overpayment based on incorrect information or an incorrect interpretation of SSA rules, he or she should file a request for reconsideration. This must be done within 60 days of receiving the notice. The recipient should provide SSA with information about why the payment was correct. For example, a recipient could be paid for a month, and later have SSA determine that he was over the resource limit. If the recipient is able to show that there was an error on his bank statement and that he was not over the resource limit for the month in question, the overpayment will be removed from his record.

Filing a request for reconsideration does not preclude filing a request for a waiver or vice versa. In many cases, it is best to file for both simultaneously.

### ***Waiver of overpayments***

If an overpayment appears to be correct, a recipient can still apply to have the overpayment waived. A waiver means that SSA makes an official decision that a beneficiary does not have to repay all or part of an overpayment. There are several situations under which a waiver may be approved.

SSA may grant a waiver when a recipient was not at fault for having caused the overpayment, and recovery of the overpayment would (1) defeat the purpose of the SSI program; (2) be against equity and good conscience; (3) prevent efficient administration of the SSI program due

to the small amount involved; or (4) lead to resources being less than \$50 over the resource limit. Each of these situations is described below.

*A waiver because recovery would defeat the purpose of the SSI program.* This type of waiver can be granted if the individual's income and resources are required for ordinary and necessary living expenses (food, clothing, shelter, and medical expenses—including expenses for dependents). Most people who are homeless are likely to meet these criteria and, consequently, are likely to have an overpayment waived, as long as they can demonstrate they were not at fault for the overpayment.

*Waiver because recovery is against equity and good conscience.* This type of waiver is granted when an individual not at fault for an overpayment changed a position to his or her detriment or gave up a valuable right because he or she expected a payment or had a notice indicating a payment would be made.

For example, suppose a person is told that she is eligible for SSI and received two months worth of SSI payments. In reliance on that eligibility, she signs a new lease for an apartment. After the two months, SSA determines that the payments were incorrect, and they send her a notice of overpayment stating their intention to recoup the money. In this situation, the beneficiary should file a waiver of the overpayment because she took action based on information she received from SSA and she cannot get the money back. Suppose the same person turned down

\$250 from a charity believing that she was entitled to SSI. If SSI was terminated after two months and it was determined that the benefits were incorrectly awarded, she would likely receive a waiver of the overpayment.

*Waiver because recovery would impede administration of the SSI program.* This type of waiver is narrowly limited to situations in which the overpayment to be recovered is so small that the cost of recovery would equal or exceed the administrative cost of collecting the overpayment. In such a situation, SSA will not seek to recover the overpayment. If the overpayment is under \$500 and the recipient did not cause the overpayment, it can be waived.

*Waiver due to recipient's resources being less than \$50 over the resource limit.* An overpayment due to a recipient's countable resources exceeding the resource limit by less than \$50 will be waived, unless SSA finds that a recipient willfully and knowingly concealed the existence of the overpayment.

In many cases, the point that prevents a waiver from being granted is the recipient's inability to demonstrate that he or she was not at fault for causing the overpayment. An erroneous SSA payment does not absolve a recipient from responsibility. For example, a recipient who receives money in excess of the entitlement and immediately spends the funds, could be considered at fault for the resulting overpayment. The recipient should have realized that she was spending funds to which she was not entitled, or because she may have failed to submit information that she knew or should have known she was supposed to submit.

### ***Reduction in benefits to repay an overpayment***

If SSA alleges a recipient has been overpaid and the overpayment is not challenged or waived, SSA will adjust the recipient's monthly benefits to repay the overpayment. The maximum amount that can be recovered each month is limited. SSA either can take the recipient's entire monthly Federal benefit payment or can take ten percent of the recipient's total income for the month, whichever is less.<sup>1</sup> For example, if SSA were to take ten percent of the recipient's total income, for a recipient whose sole income is the maximum FBR of \$579 (in 2005), the repayment would be \$57.90 per month. In another example, for someone whose countable income was such that their benefit payment was \$45 per month, SSA could take 100 percent of the benefit (\$45 per month) which is less than ten percent of the FBR (\$57.90).

SSA does not always have to take the maximum repayment amount. A lower rate can be requested, in order not to deprive the recipient of income that is required for ordinary and necessary living expenses. Conversely, SSA may take more than the maximum reduction, if the overpayment occurred because of fraud, willful misrepresentation, or concealment of material information by the recipient or his or her spouse.

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### **What are SSA's work incentive programs?**

The SSI program includes several important work incentive programs that encourage people receiving disability benefits to return to part-time or full-time employment.

An *overview* of these incentives follows. Recipients should consult with a SSA representative prior to attending work, so that their individual situations can be determined.

#### ***Working and remaining eligible for SSI***

Financial eligibility for SSI always can be maintained as long as countable income does not exceed the Federal payment standard (\$579 in 2005). In states that offer a supplement above \$579, countable income must not exceed the total of \$579 plus the State supplement.

If a person begins to work while receiving SSI, employment income exclusions come into play. For those whose only income is SSI, there is an \$85 exclusion to earnings. Those with other income in addition to SSI have a \$65 exclusion. A formula then is applied that considers Impairment-related Work Expenses (IRWEs) and reduces the SSI check, in general, by half the countable earnings from work. As these calculations are made, a case manager can soon see that, to have the entire SSI check stopped, earnings must be significant—approximately twice the FBR.

<sup>1</sup> Countable non-SSI income plus any SSI and State supplement.



During the time a recipient has any SSI benefit—even as low as \$1—he or she remains eligible for Medicaid. Clearly, trying to work improves a recipient's financial status.

### ***Working and remaining eligible for SSDI***

Work incentives under SSDI are quite different from those for SSI. Under SSDI, a beneficiary has a Trial Work Period of nine months during which he or she receives the full SSDI benefit. For a month to be counted as a trial work month, a person has to have gross earnings (in 2005) of \$590 within the month. Gross earnings under this amount do not count in this calculation. After nine months of work at this earning level, SSA reviews the person's situation, undertakes an additional review and calculation, and makes a determination whether the individual is eligible for ongoing SSDI. This determination can be complicated; recipients are urged to consult with a SSA representative when they begin to work to be well informed about the potential impact of employment on SSDI benefits. As is true with SSI, however, SSDI recipients are financially more sound obtaining employment.

As with any change in a beneficiary's life (e.g., change of address, name), changes in work status need to be reported to SSA immediately and updated information should be provided as these occur. SSA conducts data matching with the IRS and other Federal and State agencies. This means that work income that is not reported by a recipient will likely be discovered by SSA anyway. If this occurs, the recipient may incur an overpayment and jeopardize his or her eligibility.

### ***Impairment-related work expenses***

As mentioned in Chapter 4, impairment-related work expenses (IRWEs) also can be deducted from work income. IRWEs are a person's out-of-pocket expenditures that are related to his or her disability and that enable the individual to work. For example, for people with physical disabilities, an IRWE might include special equipment or modifications to existing equipment for which the person must pay. For people with psychiatric disabilities, an IRWE likely would include medication copayments or medical bills that are not covered but that are related to one's disability and help the person with work. IRWEs do not include such work-related costs as routine bus transportation, meals, uniforms that everyone has to wear, or other expenses that people without disabilities also have. IRWEs are considered in the SSI calculation before the SSI income is reduced. For SSDI, IRWEs are taken into account when the person completes the trial work period.

### ***Plans for Achieving Self-Support***

For people receiving SSI, a Plan for Achieving Self-Support (PASS) is also available. This plan enables SSI recipients who work to set aside a portion of monthly income and/or assets to achieve a work goal. For example, a person might want to develop a PASS to go to college or another training program to learn a new skill. A PASS also could be used to purchase equipment to set up a business. To develop a PASS, a recipient must work with a SSA representative and have the plan approved by SSA. If a plan is approved, funds

saved are deducted from the earned income before the countable income is calculated.

All PASS funds must be used for the agreed upon vocational goal. This use should be documented with receipts and any other paperwork, since SSA reviews PASS plans regularly, usually on at least an annual basis.

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### **What if income from work exceeds allowable limits?**

If countable work income exceeds the SSI Federal Benefit Rate (plus the State supplement, if available), SSI benefits will be suspended. If these benefits are suspended 12 months, SSI is terminated.

#### ***Expedited reinstatement provision***

Under the *expedited reinstatement provision*, an SSI recipient has up to 60 months to request reinstatement of benefits after income from work makes him or her ineligible. The individual gets up to six months of provisional benefits—just like in presumptive disability determination cases—while medical eligibility is re-determined.

#### ***Continuation of SSI benefits: §1619(a)***

Public Law 99–643 established two provisions helpful to SSI recipients. The first, Section 1619(a), enables individuals to receive SSI payments even though earnings exceed the SGA level.<sup>2</sup> To be eligible for §1619(a) benefits, individuals must continue

to have the original disabling impairment and must currently meet all other eligibility rules, including the income and resource test. If all eligibility requirements continue to be met when earnings increase to greater than the SGA level but remain lower than the benefit rate plus supplements, recipients will automatically move into §1619(a) status.

There are not observable differences between regular SSI payments and §1619(a) payments. Eligibility for §1619(a) cash payments will continue until earnings fall below SGA, at which point individuals will automatically move back into regular status or when countable earnings exceed the payment rate, at which time cash payments will cease due to financial ineligibility. Maintaining SSI eligibility also would maintain Medicaid for most recipients.

#### ***Continuation of Medicaid eligibility: §1619(b)***

The other provision under Public Law 99–643 is Section 1619(b) that allows for Medicaid continuation despite work income. If a person's SSI benefits are suspended solely because of increased earnings income, under §1619(b), the individual may keep Medicaid. This is possible as long as the recipient meets all SSI non-medical disability requirements except for earnings and needs Medicaid to continue to work.

<sup>2</sup> Remember that to prove medical eligibility for SSI, one has to show that he or she is not engaged in Substantial Gainful Activity. SSA assigns a dollar figure to SGA—\$810 in 2004. Anyone earning over SGA during their application process is presumed able to work and thus ineligible. As an incentive to working while on SSI, PL 99–643 was passed, allowing SSI to continue for disabled SSI recipients who earn over SGA.

Individuals are eligible for §1619(b) status as long as their gross earnings fall between certain limits, which are called the threshold amounts. The thresholds are standards used to determine if earnings are sufficient to offset the loss of Medicaid. The law does not mention thresholds—they are designed to make administration of the program easier, much like the presumption that \$830 (2005) is equivalent to the ability to engage in Substantial Gainful Activity. Threshold amounts vary from state to state as a result of variations in the cost of medical services. Like SGA, threshold amounts are rebuttable presumptions. Individualized thresholds can be computed if individuals have medical costs higher than those represented by their state threshold.

### ***Ticket to Work Program***

The Ticket to Work program was enacted by Congress in 1999 and is the newest SSA work incentive program. Implementation of this program is done by each state. In general, the statute has two significant parts that are helpful to SSA disability benefits recipients: (1) the ticket program provides a voucher system so that individuals can obtain vocational services from any willing provider who participates in the program, and (2) Medicaid buy-in allows SSDI recipients who work to “buy into” the Medicaid program. Again, particulars of each of these is different for each state. Detailed information on this program can be found on the SSA Web site: [www.socialsecurity.gov/work/Ticket/ticket\\_info.html](http://www.socialsecurity.gov/work/Ticket/ticket_info.html). Local SSA offices also should have information on implementation in the state in which they exist.

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## **Summary**

The receipt of SSI and/or SSDI can provide for homeless individuals the ability to stabilize their lives and to begin to reach their goals. One of these goals is often beginning or returning to work. As with all aspects of the SSA program, case managers need to be informed about requirements for those approved for benefits and should assist individuals in meeting these. Understanding the work incentives under each of these programs can also enable case managers to be of greater assistance in the lives of individuals whom they serve. Helping a person maintain his or her disability benefits and, whenever possible, work toward greater self-sufficiency can provide the basis for a relationship that is rewarding, goal-oriented, and focused on recovery.

